PETROLIAM NASIONAL BHD

v.

NIK RAMLI NIK HASSAN

COURT OF APPEAL, KUALA LUMPUR
GOPAL SRI RAM JCA
NH CHAN JCA
AHMAD FAIRUZ JCA
[CIVIL APPEAL NO: W-02-269-1996]
25 JANUARY 2000

ADMINISTRATIVE LAW: *Remedies - Certiorari and mandamus - Constructive dismissal - Whether respondent dismissed without just cause and excuse - Whether Industrial Court committed an error of law*

The respondent was employed by the appellant as a geologist since 1978. In 1983, the appellant granted a scholarship to the respondent and sent him to attend a course at Oxford University, England. By the relevant scholarsip agreement, the respondent was required to serve the appellant for six years "in such post and at such salary and upon such terms and conditions as may be determined by Petronas, having regard to his previous service in Petronas and the qualification he has obtained through attending the course". The respondent successfully completed the course and obtained a doctorate in geology. On his return, however, the respondent was given his old position as geologist, and not one that befitted his new qualification. The respondent pleaded with the appellant for a betterment of his position, but to no avail. Two years later, by letter dated 12 December 1988, the respondent considered himself dismissed by the appellant and left the appellant's service.

The matter of the respondent's dismissal was referred to the Industrial Court, whereupon that court took the view that the appellant was not guilty of any breach of the service contract, and so dismissed the respondent's claim. Upon a judicial review, the High Court held that the Industrial Court had committed an error of law in concluding the way it did, and hence issued an order of *certiorari* quashing the Industrial Court's decicion, and a further order of mandamus against the appellant. Dissatisfied with the decision, the appellant appealed.

Held:
Per Gopal Sri Ram JCA

[1] This is a case where it is clear that the Industrial Court took a narrow and pedantic approach to the facts before it. This is not a case of breach of contract at common law. This is a case which, according to the terms of the Industrial Relations Act 1967, has to be decided in accordance with good conscience and equity.

[2] Having regard to the factual matrix, in particular the treatment that the respondent received at the hands of the appellant's officers, there is little or no doubt that a reasonable tribunal, properly directing itself on the facts and law, would have reached a conclusion that the respondent had been dismissed without just cause or excuse.

[3] This is a suitable case to vary the order of the learned judge to the following extent: (i) *certiorari* is to issue to quash the award of the Industrial Court; (ii) there shall be entered a finding that the respondent was dismissed without just cause and excuse; (iii) the order of mandamus is set aside; (iv) the case shall be remitted to the Industrial Court to assess the quantum of compensation only; and (v) the remedy of re-instatement is refused.

[Appeal dismissed; order accordingly.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Responden bekerja dengan perayu sebagai seorang ahli kajibumi sejak tahun 1978. Pada tahun 1983 perayu memberi biasiswa kepada responden dan menghantar beliau untuk berkursus di Universiti Oxford, England. Berdasarkan perjanjian biasiswa yang relevan responden dikehendaki berkhidmat dengan perayu selama enam tahun "pada jawatan, gaji dan syarat-syarat sepertimana yang ditentukan oleh Petronas, dengan mengambilkira perkhidmatan responden yang lalu serta kelayakan yang diperolehinya setelah berkursus". Responden berjaya menyempurnakan kursusnya dan telah memperoleh ijazah kedoktoran dalam bidang kajibumi. Bagaimanapun, sekembalinya dari berkursus, responden telah diberikan jawatannya yang lama, dan tidak jawatan yang menepati kelayakan barunya. Responden merayu kepada perayu supaya memberinya jawatan yang lebih baik, tetapi gagal. Dua tahun kemudian, melalui surat bertarikh 12 Disember 1988, responden menganggap dirinya sebagai telah diberhentikan kerja dan terus meninggalkan perkhidmatan perayu.

Halperkara pemberhentian kerja responden telah dirujuk ke Mahkamah Perusahaan di mana mahkamah tersebut mengambil pendapat bahawa perayu tidak melanggar apa-apa syarat kontrak perkhidmatan, dan dengan itu menolak tuntutan responden. Melalui satu kajian semula kehakiman, Mahkamah Tinggi memutuskan bahawa Mahkamah Perusahaan telah melakukan kekhilafan undang-undang dalam mencapai pandangannya tersebut, dan oleh yang demikian, membenarkan perintah certiorari bagi membatalkan keputusan Mahkamah Perusahaan, serta suatu perintah mandamus terhadap perayu. Berasa tidak puas hati dengan keputusan, perayu merayu.

Diputuskan:
Oleh Gopar Sri Ram HMR

[1] Ini adalah kes di mana ianya jelas bahawa Mahkamah Perusahaan telah mengambil pendekatan yang sempit dan yang terlalu mementingkan peraturan terhadap fakta kes di hadapannya. Ini bukanlah kes pelanggaran kontrak di sisi common law. Ini adalah kes di mana, berdasarkan peruntukan Akta Perhubungan Perusahaan 1967, ianya harus diputuskan secara 'good conscience dan equity'.

[2] Mengambilkira fakta kes, terutama layanan yang diterima responden dari pegawai-pegawai perayu, tidak ada keraguan bahawa suatu tribunal yang munasabah, dengan mengarahkan dirinya dengan betul terhadap fakta dan undang-undang, akan mencapai rumusan bahawa responden telah diberhentikan kerja tanpa alasan yang munasabah dan adil.

[3] Ini adalah kes yang sesuai untuk mengubah perintah hakim bijaksana seperti berikut: (i) perintah *certiorari* dibenarkan bagi membatalkan keputusan Mahkamah Perusahaan; (ii) rumusan dibuat bagi menyatakan bahawa responden telah diberhentikan tanpa alasan yang munasabah dan adil; (iii) perintah mandamus diketepikan; dan (v) remedi perlantikan semula ditolak.

[Rayuan ditolak; perintah sekadarnya.]

Case(s) referred to:
Hotel Malaya Sdn Bhd v. National Union of Hotel, Bar and Restaurant Workers & Anor [1982] 2 MLJ 237 ***(refd)***
R Ramachandran v. The Industrial Court of Malaysia [1997] 1 CLJ 147 ***(refd)***
The State of Madras v. G Sundaram AIR [1965] SC 1103 ***(refd)***
William Jacks & Co (M) Sdn Bhd v. S Balasingam [1997] 3 CLJ 235 ***(refd)***

Legislation referred to:
Industrial Relations Act 1967, s. 20(1)

For the appellant - S Nantha Balan; M/s Shook Lin & Bok
For the respondent - LG Seah; M/s Lobo & Assoc

[Appeal from High Court, Kuala Lumpur; Originating Motion No: R2-25-18-1995]

Reported by WA Sharif

JUDGMENT

Gopal Sri Ram JCA:

This is an appeal against the order of the learned judge issuing *certiorari* to quash an award of the Industrial Court decided under s. 20 of the Industrial Relations Act 1967. The basic facts of the case are not in dispute.

The respondent was, at all material times, employed as a geologist by the appellant. He commenced working for the appellant on 16 December 1977. On 8 October 1983, the parties entered into a scholarship agreement under the terms of which the appellant sent the respondent to attend a course at the University of Oxford in England. The respondent successfully completed that course and obtained a doctorate in geology. The scholarship agreement required the respondent to serve the appellant for six years "in such post and at such salary and upon such terms and conditions as may be determined by Petronas (the appellant) having regard to his previous service in Petronas and the qualification he has obtained through attending the course." (See cl. 1(ix) of the scholarship agreement).

On his return from the United Kingdom, the respondent was given a position as geologist with the appellant. This was the same position that he had occupied in 1978 when he first joined the appellant. The respondent was dissatisfied with this state of affairs. In addition, he was, to put it mildly, ill-treated by his immediate superior, Dr. Ramlee Karim. The latter took steps to ignore the respondent and did not permit him to participate in the work opportunities available in the Laboratory Services Department in which the respondent was located. As a result of the unsatisfactory position that obtained, the respondent wrote several letters, some of which received no reply from the appellant. We do not propose to reproduce all the correspondence in this judgment. Suffice to say that the respondent's letters evince a tone of sad frustration and a plea for a betterment of his position. That his plea fell on deaf ears is apparent from the total lack of response from the appellant. Instead, the appellant chose to treat the respondent's complaints as being confrontational. In the words of its counsel, Mr. Nantha Balan, "the respondent was dictating terms" to the appellant. It is unfortunate that the appellant formed such a view. On our part, we must say in fairness to the respondent, that the tone of his letters does not admit of such a description.

After waiting for about two years for an improvement of his position, the respondent came to the conclusion that the appellant was not minded to honour its obligations made with him under the scholarship agreement. Accordingly, on 19 December 1988, the respondent wrote to Encik Mohd Zohari (the director of the Petroleum Research Institute) stating that he had no alternative in the circumstances but to consider himself dismissed with effect from the day following the date of the letter. Having treated himself as having been dismissed, the respondent lodged a complaint with the Director General of Industrial Relations under s. 20(1) of the Industrial Relations Act 1967. Following the conciliation procedure prescribed by that section, his complaint was eventually referred to the Industrial Court. After a hearing that lasted over several days, the Industrial Court found no merit in the complaints of the respondent. It accordingly dismissed his claim for unjustified dismissal. In doing so, the learned President of the Industrial Court, after setting out the history of the matter, summed up his views in the following paragraph of his award:

> Having heard the oral evidence and seen the documentary exhibits produced by both parties before this Court I am of the finding that the Claimant has not on the balance of probability proved to the Court that he was cold storaged or was in a nothing to do position. Neither was he demoted. In fact, oral as well as documentary evidence are overwhelmingly against the contention of the Claimant. As such I am of the view that the Company is not guilty of a breach which goes to the root of the service contract or it has evinced an intention no longer to be bound by it.

The respondent, being unhappy with this decision, moved the High Court at Kuala Lumpur for orders of *certiorari* and *mandamus*. These were granted by the learned judge. He held that the Industrial Court had committed an error of law in arriving at its conclusion. This finding has been attacked before us by the learned counsel for the appellant. He has submitted that learned judge exceeded the parameters of *certiorari* jurisdiction by usurping the function of an appellate court. Mr. Nantha Balan, who has argued this appeal with much ability, drew our attention to a number of authorities which circumscribe the judicial review jurisdiction of the High Court. He has submitted, quite rightly, that once the Industrial Court made an evaluation rightly or wrongly and had arrived at a finding of fact, that finding was immunised from judicial review. (See *The State of Madras v. G. Sundaram* AIR [1965] SC 1103; *William Jacks & Co. (M) Sdn Bhd v. S. Balasingam* [1997] 3 CLJ 235; [1997] 3 AMR 2585).

For the respondent, Ms. L.G. Seah has pointed out that the Industrial Court failed to perform its function in accordance with law. In support of her argument, she cited the following passage of Raja Azlan Shah CJ Malaya in *Hotel Malaya Sdn Bhd v. National Union of Hotel, Bar and Restaurant Workers & Anor* [1982] 2 MLJ 237, 240 where he said the Industrial Court –

> exercises a quasi-judicial function. It gives a full reasoned judgment in the nature of an award (s. 30). Its function comprise an investigation of the facts, analysis of the facts, findings of facts, and lastly, the application of the law to those findings.

It is Ms. Seah's argument that the learned judge was right in issuing *certiorari* because the Industrial Court did not conduct an analysis of the facts. She says that if it had, it would not have come to the conclusion that it did. For good measure, she also adds that no reasonable tribunal, similarly circumstanced, would have arrived at the decision which the Industrial Court did.

Now, having read the record and having considered the submissions of both counsel carefully, we agree with the submission advanced on behalf of the respondent. This is a case where it is clear that the Industrial Court took a narrow and pedantic approach to the facts before it. This is not a case of breach of contract at common law. This is a case which, according to the terms of the Industrial Relations Act 1967, has to be decided in accordance with good conscience and equity.

Mr. Nantha Balan's response is that the Industrial Court had in fact acted in accordance with equity and good conscience. He drew our attention to the final paragraph in the award. But with respect to counsel, the mere staccato repetition of the statutory formula by the Industrial Court does not fulfil its function. A mere statement to that effect does not satisfy the requirement. It must in fact do so.

Having regard to the factual matrix, in particular, the treatment that the respondent received at the hands of the appellant's officers, there is little or no doubt in our minds that a reasonable tribunal, properly directing itself on the facts and law would have reached a conclusion that the respondent had been dismissed without just cause or excuse. That is indeed the conclusion of the learned judge. We are fully in agreement with him. Having read his judgment, we are unable to discover any misdirection either in law or in his appreciation of the facts. We are therefore of the view that this appeal should be dismissed. The appellant is to pay the costs of this appeal. The deposit is to be paid out to the respondent to account of his taxed costs.

Following the decision of the Federal Court in *R Rama Chandran v. The Industrial Court of Malaysia* [1997] 1 CLJ 147; [1997] 1 MLJ 145, we find this to be a suitable case, in view of the findings we have arrived at to vary the order of the learned judge to the following extent:

(1) *certiorari* is to issue to quash the Award of the Industrial Court;

(2) there shall be entered a finding that the respondent was dismissed without just cause or excuse;

(3) the order of *mandamus* is set aside;

(4) the case shall be remitted to the Industrial Court to assess the quantum of compensation only.

(5) the remedy of reinstatement is refused.